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12 United States of America

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15 IN THE UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 CASE NO. 1:20-CR-00138-NONE-SKO

19 Plaintiff,

20 v.  
21 STIPULATION REGARDING EXCLUDABLE  
22 TIME PERIODS UNDER SPEEDY TRIAL ACT;  
23 FINDINGS AND ORDER

24 ELENO FERNANDEZ-GARCIA,

25 Defendant.

26 DATE: March 17, 2021  
27 TIME: 1:00 p.m.  
28 COURT: Hon. Sheila K. Oberto

29  
30 This case is set for a status conference on March 17, 2021. On May 13, 2020, this Court issued  
31 General Order 618, which suspends all jury trials in the Eastern District of California until further notice  
32 and allows district judges to continue all criminal matters, excluding time under the Speedy Trial Act  
33 with reference to the court's prior General Order 611 issued on March 17, 2020, the court's subsequent  
34 declaration of a judicial emergency based on 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's  
35 Order of April 16, 2020 continuing this court's judicial emergency for an additional one-year period and  
36 suspending the time limits of 18 U.S.C. § 3161(c) until May 2, 2021, with additional findings to support  
37 the exclusion in the Judge's discretion. This and previous General Orders were entered to address  
38 public health concerns related to COVID-19.

39  
40 Although the General Orders address the district-wide health concern, the Supreme Court has  
41 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
42 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 7 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 8 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 9 the ends of justice served by taking such action outweigh the best interest of the public and the  
 10 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 11 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 12 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 13 the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following  
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 25 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date  
 26 for the change of plea. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial

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 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 continuance must be “specifically limited in time”).

2

3 **STIPULATION**

4

5 Plaintiff United States of America, by and through its counsel of record, and defendants, by and  
6 through defendants’ counsel of record, hereby stipulate as follows:

7 1. By previous order, this matter was set for a status conference on March 17, 2021.

8 2. By this stipulation, defendant now moves to continue the status conference to May 5,  
9 2021, at 1 p.m. and to exclude time between March 17, 2021, and May 5, 2021, under Local Code T4.

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) Counsel for defendant desires additional time to confer with his clients, discuss  
12 the government’s plea offer, conduct further investigation, and reach a potential resolution.

13 b) Counsel for defendant believes that failure to grant the above-requested  
14 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
15 into account the exercise of due diligence.

16 c) The government does not object to the continuance.

17 d) In addition to the public health concerns cited by General Order 617, and  
18 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
19 this case because the defendants do not consent to proceed using videoconferencing or telephone  
20 conferencing pursuant to General Order 614.

21 e) Based on the above-stated findings, the ends of justice served by continuing the  
22 case as requested outweigh the interest of the public and the defendant in a trial within the  
23 original date prescribed by the Speedy Trial Act.

24 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
25 et seq., within which trial must commence, the time period of March 17, 2021 to May 5, 2021,  
26 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) (Local Code T4)  
27 because it results from a continuance granted by the Court at defendant’s request on the basis of  
28 the Court’s finding that the ends of justice served by taking such action outweigh the best interest

1 of the public and the defendant in a speedy trial.

2 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
4 must commence.

5 IT IS SO STIPULATED.

6 Dated: March 10, 2021

7 McGREGOR W. SCOTT  
United States Attorney

8 /s/ KAREN A. ESCOBAR  
9 KAREN A. ESCOBAR  
10 Assistant United States Attorney

11 Dated: March 10, 2021

12 /s/ DAVID TORRES  
13 DAVID TORRES  
14 Counsel for Defendant  
ELENO FERNANDEZ-  
GARCIA

15 **FINDINGS AND ORDER**

16 IT IS SO ORDERED.

17 Dated: March 10, 2021

18 /s/ Sheila K. Oberto  
19 UNITED STATES MAGISTRATE JUDGE